

Senator Parley G. Hellewell proposes the following substitute bill:

MEDICAL ARBITRATION AGREEMENT

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE

General Description:

This bill prohibits a health care professional from refusing to provide health care to a person solely on the basis that the person refused to sign a medical malpractice arbitration agreement.

Highlighted Provisions:

This bill:

- ▶ prohibits a health care professional from refusing to provide health care to a person solely on the basis that the person refused to sign a medical malpractice arbitration agreement;
- ▶ changes the arbitration panel to a single, neutral arbitrator;
- ▶ reduces the term of the arbitration agreement to one year;
- ▶ provides that a patient may require mandatory mediation before arbitration;
- ▶ provides that an arbitration award shall be filed as a judgment in district court; and
- ▶ requires the cost of mediation and arbitration to be split evenly between the parties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

78-14-17, as last amended by Chapter 207, Laws of Utah 2003

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **78-14-17** is amended to read:**78-14-17. Arbitration agreements.**

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing and by verbal explanation, the following information on:

(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;

(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;

(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

(iv) the right of the patient to decline to enter into the agreement and still receive health care [~~if Subsection (2) applies~~];

(v) [~~the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date~~] the patient's right to request mediation of the dispute prior to arbitration;

(vi) the right of the patient to have questions about the arbitration agreement answered; and

(vii) the right of the patient to rescind the agreement within 30 days of signing the agreement; and

(b) the agreement shall require that:

~~[(i) one arbitrator be collectively selected by all persons claiming damages;]~~

~~[(ii) one arbitrator be selected by the health care provider;]~~

~~[(iii) a third]~~ (i) (A) an arbitrator be jointly selected by all persons claiming damages and the health care provider from a list of individuals approved as arbitrators by the state or

federal courts of Utah; and

(B) if the parties cannot agree on an arbitrator, the arbitrator shall be selected by the district court;

(ii) the cost of the arbitrator shall be split evenly between the parties;

~~[(iv)]~~ (iii) all parties waive the requirement of Section 78-14-12 to appear before a hearing panel in a malpractice action against a health care provider;

(iv) the filing of the panel's award of damages as a judgment against the provider in the appropriate district court;

(v) the patient be given the right to rescind the agreement within 30 days of signing the agreement; and

(vi) the term of the agreement be for one year ~~[and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date].~~

(2) (a) When a medical malpractice claim is arbitrated, the patient may require mediation of the dispute before the arbitration is commenced.

(b) The cost of mediation shall be evenly split among the parties.

(3) An arbitrator's award of damages shall be filed with the appropriate district court as a judgment against the provider.

~~[(2)]~~ (4) Notwithstanding Subsection (1), a patient may not be denied health care [of any kind from the emergency department of a general acute hospital, as defined in Section 26-21-2,] on the sole basis that the patient or a person described in Subsection [(5)] (7) refused to enter into a binding arbitration agreement with a health care provider.

~~[(3)]~~ (5) A written acknowledgment of having received a written and verbal explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written and verbal explanation of the agreement as required by Subsection (1) unless the patient:

(a) proves that the person who signed the agreement lacked the capacity to do so; or

(b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

~~[(4)]~~ (6) The requirements of Subsection (1) do not apply to a claim governed by a

88 binding arbitration agreement that was executed or renewed before May 3, 1999.

89 [~~(5)~~] (7) A legal guardian or a person described in Subsection 78-14-5(4), except a
90 person temporarily standing in loco parentis, may execute or rescind a binding arbitration
91 agreement on behalf of a patient.

92 [~~(6)~~] (8) This section does not apply to any arbitration agreement that is subject to the
93 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.